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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF DISAPPEARANCES AND SUMMARY EXECUTIONS

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2001/45

Addendum

Mission to Turkey

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Introduction

1. At the invitation of the Government, the Special Rapporteur conducted a mission to Turkey from 19 February to 1 March 2001. The visit, which had been planned and agreed to in 1999, was mainly aimed at allowing the Special Rapporteur to investigate in situ allegations of violations of the right to life, including deaths in custody, deaths due to excessive use of force by the police or military, killings in connection with abductions and "disappearances".

2. The Special Rapporteur wishes to take this opportunity to thank the Government of Turkey for its cooperation before, during and after the mission. While in Turkey, the Special Rapporteur was able to move freely and collect information relevant to her mandate from a great variety of sources. The Government was also helpful in organizing the official meetings the Special Rapporteur had requested. However, she regrets that it was not possible to arrange meetings with the Chief of General Staff and the Commander of the Gendarmerie in Ankara. She also wishes to thank the representatives of non-governmental organizations, lawyers and private individuals who assisted her during the visit. The Special Rapporteur wishes to express her particular appreciation to the United Nations Development Programme and the United Nations Information Centre, which provided invaluable support and assistance to the Special Rapporteur and her delegation.

I. PROGRAMME OF THE VISIT

3. During her visit the Special Rapporteur held meetings in Ankara with the following officials and government representatives: the Minister of Justice, the Minister of State responsible for Human Rights, the Chairman of the Human Rights Commission of the Turkish Grand National Assembly, the Chairman and members of the High Council of Judges and Prosecutors, the Undersecretary of the Ministry of the Interior, the Chief Prosecutor of the Court of Appeals, the President of the Constitutional Court and officials of the Ministry for Foreign Affairs.

4. In Ankara the Special Rapporteur also met with representatives of a large number of non-governmental organizations, including the Human Rights Foundation, the Turkish Human Rights Association, the Ankara Bar Association and the Association of Contemporary Lawyers. The Special Rapporteur also had meetings with a number of private individuals, including journalists, lawyers and members of political parties. Discussions were also held with a number of United Nations agencies and other international organizations, including the United Nations Development Programme, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees. The programme also included meetings with representatives of diplomatic missions in Ankara, including the representation of the European Commission. At the end of her mission, the Special Rapporteur held a press-conference in Ankara.

5. From 21 to 24 February, the Special Rapporteur and her delegation travelled to Diyarbakir and Batman. In Diyarbakir she met with the Governor of the emergency district, the Chief of Security, the President of the State Security Court, the Chief Prosecutor and the District Commander of the Gendarmerie. While in Diyarbakir, the Special Rapporteur further met with

representatives of civil society, including the Human Rights Foundation, the Turkish Human Rights Association, the Educational Syndicate, the Diyarbakir Bar Association, and the People's Democratic Party (HADEP). The programme also included a visit to Diyarbakir prison. The Special Rapporteur went on a day-trip to the town of Batman where she met with the Provincial Governor. She also had discussions with representatives of the local chapter of the Human Rights Association and the Batman Bar association. On her way to Batman the Special Rapporteur stopped in Bismil, where she met with the local chapter of the HADEP party. In addition, the Special Rapporteur held several meetings with the families of victims throughout her mission.

6. From 24 to 26 February, the Special Rapporteur visited Istanbul, where she met with the Deputy Mayor of Istanbul, the Chief of Police and the Chief Prosecutor. In Istanbul she also visited Bayrampasa prison and the Forensic Institute and held discussions with judges at local criminal courts. The programme also included discussions with non-governmental organizations, lawyers, journalists and private individuals, including the Istanbul Human Rights Association, the Center for Human Rights, the Istanbul Bar Association, the Helsinki Citizen's Assembly, the Istanbul Medical Association, Women for Women's Human Rights and the human rights division of the local HADEP party chapter. The Special Rapporteur wishes to express her deep gratitude to the families of victims who made the effort and took the time to share information with her.

II. GENERAL OBSERVATIONS

Reporting

7. The Special Rapporteur regrets the delay in submitting this report, which is mainly due to the fact that the bulk of the material gathered during the mission had to be translated from the Turkish language. It should be noted that the visit came at a time when the incidents of extrajudicial killings had virtually come to an end. Predictably, the non-governmental organizations and those affected by violations of the right to life resented the Special Rapporteur's absence during previous years when a higher number of extrajudicial executions were reported. She appreciates that the limitations on her mandate as a mechanism for human rights protection are not always apparent to external observers and actors, including the victims and their families as well as human rights workers and non-governmental organizations. These limitations are particularly evident in relation to in situ visits, which are dependent upon cooperation and official invitations by the Governments concerned. The Special Rapporteur, therefore, urges Governments to cooperate with the special procedures of the Commission on Human Rights, particularly when the situation demands their presence so that preventive measures can be taken and further killings of innocent civilians might be prevented.

8. This report largely follows the structure of previous mission reports, with one exception. In the present report, the Special Rapporteur has included a discussion of the structure of governance, because she feels concerned that the bottlenecks within the institutions of the Government give rise to impunity for the offenders. There is a lack of accountability and transparency within the institutions, which adds to the insecurity of the people, who fear that the

"old habits" of the establishment and the institutions of the State may yet return. The Special Rapporteur feels it important to report the concerns she heard when talking directly to people in Turkey. However, she does not find scope within her mandate to make any direct recommendations on the pattern or system of governance in Turkey.

Historical perspective

9. The Republic of Turkey was formed on 29 October 1923, after the disintegration of the Ottoman Empire. The founding father of the Republic, Mustafa Kemal, more affectionately known as Kemal Ataturk (Kemal, Father Turk), played a leading role in the emergence of the Republic. He rebuilt the Republic and reshaped its political direction. His political philosophy was based on six principles (the so-called six arrows), namely: republicanism, nationalism, populism, reformism, etatism (a form of socialism) and secularism. In theory, it was a farsighted and liberal political agenda, but in practice it was not inclusive of the cultural, ethnic and political diversity of Turkish society. Kemal Ataturk was a charismatic leader and is widely respected by his compatriots to this day. He is admired by a large number of Muslims around the world for his progressive approach in secularizing Turkey.

10. The leap from the era of the Ottoman Empire to a republic was not easy. The seat of the Muslim Caliphate was in Turkey - an emotional symbol of religious identity for Muslims around the world. After the abolition of the Ottoman Sultanate, the Caliphate was expected to confine itself purely to religious functions, but its mere presence influenced the political direction of Turkey. Pro-republican forces were briefly challenged by the supporters of the Caliphate. Although some Turks had an emotional attachment to the Caliphate, others saw it as the only counterweight to Ataturk's dominance of the political scene. Ultimately, the Caliphate lost and in March 1924 it was abolished. In April the same year, the first Constitution of the Republic, which heavily stressed a nationalist-cum-secular principle, was adopted by the Grand National Assembly. Since the very inception of the Republic, Kurdish groups, right-wing Islamists and the radical left wing have been discontented and from time to time challenged the State's extreme nationalism - which often prevailed, sometimes even at the expense of individual or collective rights of the people.

11. Kemal Ataturk was the founding President and Ismet Inonu the first Prime Minister of the Republic; the latter succeeded Ataturk after his death on 10 November 1938. The monopoly on power began to erode gradually as external and domestic pressures demanded a process of democratization.

12. Step by step Inonu gave way and introduced a number of political reforms, including elections through direct voting. A controlled multiparty system was allowed to function. This led to the defeat of the founding political party, the Republic People's Party, in the general elections of 1950. The Democratic Party led by Adnan Menderes formed the Government, which soon became over-confident because of its popular support. The military was, however, never comfortable with the new situation or the ruling party. It was a period of transition with mixed policies. The Government made positive contributions towards some economic and political reforms, but restricted the freedom of the press and other fundamental rights. Political

deadlock in the parliamentary process prompted outbursts of violence, which led to martial law followed by a coup d'état. On 27 May 1960, the army arrested the ministers and the elected officials who were members of the ruling party, including the Prime Minister and the President of the Republic. The Prime Minister was tried, sentenced to death and executed on 17 September 1961. The army chief assumed, for the interim period, the office of the Prime Minister and the President. A Committee of National Unity (CNU) comprising army officers appointed a military-cum-civilian Cabinet. An interim legislature, including the members of the CNU, drafted a new constitution. The Constitution was adopted after having been submitted to a popular referendum. Fresh parliamentary elections were held under the 1961 Constitution.

13. Civilian rule between the two military interventions (May 1960 and September 1980) remained unstable, and the transition to the democratic process did not take off. Governance by a series of coalition and minority party governments was poor and the "guardianship" of the military further hampered development. Threats of military takeover overshadowed the political scene. In 1971, the army generals presented a memorandum to the President expressing their discontent with the situation, prompting Prime Minister Suleijman Demirel to resign. Political commentators have called the resignation an ouster of the Prime Minister through "a coup by memorandum". Political instability and a deteriorating law-and-order situation gave way to a proclamation of martial law in 13 provinces. Political divisions hardened to the extent that Parliament was unable to elect a president after the former one retired. Another military coup assumed authority in the country. Mass-scale arrests were made, including of the present Prime Minister.

14. The new army organization found the 1961 Constitution inadequate, even though it had been drafted under the tutelage of its military predecessors. A constitutional committee selected from amongst a nominated Consultative Assembly drew up the draft of the 1982 Constitution. This was put to referendum in November 1982, and formally adopted as the third Constitution of the Republic. A large number of politicians (including the present Prime Minister) were banned from participating in active politics for the following 10 years. General elections were held in 1983, which were reportedly controlled by the army. Unexpectedly, however, the Motherland Party (CNAP) led by Turgut Ozal won and ruled for eight years, bringing some stability to the political process. The ban on politicians' taking part in the electoral process was lifted and Mr. Ozal was succeeded by Suleyman Demirel, the leader of the True Path Party. Subsequently, Mr. Demirel acceded to the presidency after Mr. Ozal died in office. Tansu Cillar succeeded Mr. Demirel; she was the first female Prime Minister of Turkey.

15. In 1996, a new Government was formed under the leadership of Prime Minister Necmettin Erbakan of the Welfare Party, an Islamic political party. This displeased the secularists, and particularly the military establishment, in Turkey. The National Security Council exerted pressure and eventually Mr. Erbakan was forced to resign. Since then Turkey has inched forward in the democratic process, disturbed from time to time by the rise of militancy amongst Kurdish and Islamic groups and the Government's own nervousness in recognizing the rights of the Islamic political parties, the Kurdish people and the radical left. Above all, Turkey's military continues to influence political decision-making, thereby undermining civilian supremacy and authority.

Challenges to homogeneity

16. The Republic of Turkey has time and again been challenged by Kurdish nationalism, Islamists and radical leftist groups. The imposition of an official homogeneous image of Turkey excludes any conflicting identity or ideology, and such differences remain threatened and often suppressed by the State. At the same time, while some leftist, Kurdish and Islamist groups continue to assert their identity through peaceful political means, other more radical elements have resorted to violent methods in pursuit of their aims. The Islamists and leftists have often clashed with one another, and there are allegations that during the cold war, some radical Islamist factions were created by the Government to undermine the leftists and later the PKK. Subsequently, these militant Islamic factions became increasingly independent and powerful, and it is believed that the Government has seen itself as compelled to take measures to confront and neutralize these groups.

17. Tension between Kurdish groups and the Turkish establishment dates back to the founding of the Republic. Kurds were not recognized as an ethnic group and mention of their ethnic identity was taboo. They were officially referred to as "mountain Turks" or "eastern Turks". The use of the Kurdish language was also banned and Kurdish customs were discouraged. Several Kurdish organizations were founded to assert the identity of the Kurdish people, but it was the formation of the Partiya Karkeran Kurdisstan (the Workers Party of Kurdistan, known as PKK) in November 1978 which posed the first serious challenge for the Government of Turkey. While PKK does not represent the majority of Kurds, it is the best known and most radical part of the Kurdish movement. After the 1980 military coup, members of PKK or "suspected" sympathizers were ruthlessly oppressed by the military Government. The extremist tendencies within PKK coupled with the disparities and repression experienced by the Kurds led to a militant insurgency launched by PKK in 1984. The armed attacks attributed to PKK necessitated the deployment of Turkish army units and elite police forces in the eastern part of Turkey. PKK elements have operated from camps outside the country, as well as from inside Turkey, and are reported to have killed a number of Turkish troops and gendarmes as well as civilians, in particular village guards organized by the Government to protect the community. The village guards were ostensibly created to protect the local community against PKK guerrillas, but they were viewed by PKK and their sympathizers as government informers. It appears that some village guards were forcibly recruited by the security forces. There are also reports of unarmed civilians having been killed by armed PKK elements.

18. In addition to the large number of casualties and fatalities from this conflict, which will be discussed in greater detail in chapter IV, the situation has also driven over 3 million people to leave their homes in the south-east of the country. While many of these people left their homes fearing for their lives, others were forced to move so that the security forces could carry out their operations against PKK.

19. Turkey's ruling elite is very protective of the country's secular image. However, some government officials told the Special Rapporteur that the governing parties have gradually begun to accept non-violent Islamic political movements and parties, whose popularity has continued to increase. There are a number of militant Islamic groups that have resorted to armed attacks, and

a number of outspoken defenders of Turkish secularism have been murdered by these groups. Since 1991, an invisible group called Hizbullah (apparently with no connection to the Hizbullah group in Lebanon) carried out several attacks, in particular against PKK and its sympathizers.

20. Turkey's Marxists and other radical leftist groups have little following but their often young supporters are very committed to their cause. Whereas many left-wing groups believe in a political struggle, others have used violence to pursue their goals. As a result of this situation, leftist parties have been outlawed, including the Turkish United Communist Party which was banned by the Constitutional Court. The most feared militant leftist group in Turkey is the Revolutionary Left Party (Dev Sol), which has a sizeable following including several dozen armed militants.

21. At the time of the Special Rapporteur's visit there had been no very recent reports of extrajudicial killings of members of left wing groups. However, the security forces had carried out an operation named "Operation Return to Life" in prisons, aimed at restoring government authority and control in those institutions. Thirty-two people were killed in the operation, which took place in a large number of prisons throughout Turkey. Prior to the action, a number of prisoners, many belonging to leftist groups, had started a hunger strike. During her mission, the Special Rapporteur had the opportunity to meet, amongst others, many young women political activists in prisons. Their resolve was remarkable and their political acumen, though controversial, was thought provoking. The Special Rapporteur also met with Kurdish women political prisoners, who also displayed a remarkable degree of commitment and resilience in the struggle for their rights. The Special Rapporteur fears that the prevailing tension in Turkey's prisons, if unaddressed, could lead to further violence.

III. LEGISLATION AND GOVERNANCE

The Constitution of 1982 and governance

22. The 1982 Constitution of the Republic of Turkey recognizes most civil and political rights. The Constitution also lays heavy emphasis on the protection of the indivisible integrity of the State, "national security, public order, general peace, the public interest, public morals and public health".

23. The right to life is guaranteed with certain reservations by the Constitution. Article 17 of the Constitution guarantees the right to life and "physical integrity", which cannot be violated except in cases of medical necessity and when prescribed by law. The article makes exceptions in "cases such as the execution of death penalties under court sentences, the act of killing in self-defence, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure during apprehension, the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, *the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency*" (emphasis added). The law extends a measure of impunity for the excessive use of force during riots, insurrection, or while carrying out orders during martial law or a state of emergency.

24. The language question has remained a bone of contention between the authorities and the Kurdish citizens of Turkey. The Constitution guarantees freedom of expression in one article but takes it back in another. Article 26 guarantees freedom of expression with the restriction that "no language prohibited by law shall be used in the expression and dissemination of thought". Under article 42, the Constitution also prohibits the teaching of any language but Turkish as a mother tongue at any institution of training or education.

25. The Constitution divides the power of the State between the legislature, the executive and the judiciary, and includes a National Security Council (NSC) which formally has the function of expressing its views with "regard to the formulation, establishment and implementation of the national security policy of the State". In reality, most observers consider that NSC exercises considerable influence on all three branches of the Government. NSC is composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and Air Force and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic. The sheer political weight of the members of NSC and the institutionalization of the armed forces within the civilian administration would appear to have a significant effect on all decision-making by this body.

26. The Parliament, known as the Grand National Assembly (GNA), is composed of 550 members elected for a five-year term. The Prime Minister, who is appointed from amongst the members of GNA by the President, nominates the Cabinet and together they form the Council of Ministers. All laws are introduced in GNA by the Council of Ministers and the deputies. Once legislative bills are passed, they require the ratification of the President, who may refer the proposed laws (except the budget) back to GNA for further consideration. GNA may then adopt the law in the form transmitted by the President, or amend it and send it back to the President. GNA may also empower the Council of Ministers to issue decrees, except during a state of emergency and martial law. No law impinging upon fundamental rights can be issued as a decree by the Council of Ministers.

27. The executive branch of the Government consists of the President, who is the Head of State and is elected to a non-renewable term of seven years by GNA. Elections to the presidency follow lengthy and rigorous procedures. Nominations of candidates from outside GNA must be in the form of written proposals by at least one fifth of the total number of members of the Parliament. The President is elected by securing two thirds of the votes of the total membership of GNA. If a two-thirds majority is not secured by any candidate on the first two ballots, a third ballot is held and the candidate receiving the absolute majority of the votes of the total number of members is declared elected. Turkey's President is not simply a titular or symbolic head of the State. The powers enjoyed by the President (as stated in the Constitution) are substantial. In addition to other powers, the President appoints the Chief of the General Staff; calls and presides over the National Security Council; and appoints members of the Constitutional Court, one fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the

Supreme Council of Judges and Public Prosecutors. It is thus understandable that two of Turkey's Prime Ministers preferred the presidency: Prime Minister Ozal was elected President in 1989 and after his death, Prime Minister Demirel was elected President in May 1993. The balance of power between the Prime Minister and the President (more so in practice than in theory) determines the level of supremacy of GNA.

28. Turkey is divided into 79 provinces, administered by appointed governors who act as principal agents of the central Government and report to the Ministry of the Interior. Turkey retains a centralized administrative system, where elected local bodies are subservient to governors of provinces who are appointed by the central Government. The governors act as chief administrators of the provinces and head the provincial assemblies. During a state of emergency, the governors have wide powers. At the time of the visit of the Special Rapporteur, four provinces were under a state of emergency and were being administered by a specially appointed Governor for the Emergency District. The Special Rapporteur had the opportunity to visit two such provinces, Diyarbakir and Batman, where she met a number of official and non-official persons, including the provincial governors, and the Governor of the Emergency District. It was apparent to the Special Rapporteur that the governors were under pressure from the Ministry of the Interior and closely monitored by the military at the local level.

29. The national police and the gendarmerie are the principal agencies charged with internal security and law enforcement. Both fall under the Ministry of the Interior, but the gendarmerie is under the command of the army. The gendarmerie maintains law and order in rural areas, guards against illegal smuggling and illegal border-crossing and provides security on the outer perimeters of prisons. In each province the gendarmerie commander advises the governor on matters of security. In areas where a state of emergency is declared, gendarmes play a more significant role than the police or any other civil authority. This was particularly noticeable in Diyarbakir and Batman.

30. The Constitution of Turkey sets the basic framework for the judicial system of the country. The Constitutional Court is the apex court, with limited powers. General law courts are divided into criminal, civil and administrative courts. Military courts have jurisdiction over military personnel and non-military persons who commit military offences. The State Security Courts are special courts dealing with offences against the integrity of the State.

31. The Constitutional Court consists of 11 regular and 4 alternate members. The President of the Republic appoints two regular and two alternate members from the High Court of Appeals, two regular and one alternate member from the Council of State, and one member each from the Military High Court of Appeals, the High Military Administrative Court and the Audit Court. The President also appoints three regular members and one alternate from among senior administrative officers and lawyers, plus one educationist. The Constitutional Court has jurisdiction to examine the constitutionality of laws, decrees having the force of laws and parliamentary procedural rules upon the request of either the President of the Republic or one fifth of the members of GNA. The Constitutional Court does not, however, have jurisdiction over decrees promulgated under a state of emergency, martial law, or in time of war.

32. There is a strong perception among lawyers and human rights advocates that the Constitutional Court largely serves the institution of the President and, to a lesser extent, the Parliament. The doors of this apex court are closed to individuals, whose rights may be abused through State actions or through legislation violating fundamental rights. The narrow jurisdiction of the Constitutional Court came under discussion during the Special Rapporteur's meeting with the Chief Justice of the Court, who expressed reservations concerning the expansion of the Court's jurisdiction. He felt that wider jurisdiction would deprive the Court of its special character.

International human rights obligations

33. Turkey is a party to a number of important international human rights instruments, including: the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Turkey is also a party to the four Geneva Conventions of 12 August 1949, the Convention on the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. According to article 90 of the Turkish Constitution, international treaties ratified by the Government and approved by the Grand National Assembly have the force of law.

34. On 15 August 2000, Turkey signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. However, Turkey has yet to ratify these key instruments, as well as the Optional Protocol and the Second Optional Protocol to the International Covenant on Civil and Political Rights. Turkey has signed but not ratified the International Convention on the Elimination of All Forms of Racial Discrimination. It has neither signed nor ratified the Rome Statute of the International Criminal Court.

IV. THE RIGHT TO LIFE: FINDINGS AND CONCERNS

35. In the course of the last several years, both the Special Rapporteur and her predecessor, Bacre W. Ndiaye, on numerous occasions approached the Government of Turkey regarding cases of alleged extrajudicial executions and other violation of the right to life. In most of these cases, government forces have been accused in cases of deaths resulting from excessive use of force and deaths in custody, or instances where persons were allegedly found dead after having been abducted by police or security forces. The Special Rapporteur has also received reports of alleged summary executions of captured PKK fighters. Prior to her visit to Turkey, on 23 January 2001 the Special Rapporteur sent a letter to the Government as a reminder of earlier communications, requesting the Government to provide additional information regarding a number of cases which the Special Rapporteur needed further clarification. During her visit, the Special Rapporteur had the opportunity to discuss some of these cases.

36. The emergency situation in the south-east has claimed thousands of lives in the last two decades. According to figures provided by the Governor of the Emergency District, more than 23,000 persons accused of being PKK militants have been killed since the imposition of the

state of emergency in 1987. According to this information, more than 4,400 unarmed civilians were killed and some 5,400 wounded in the same period. More than 5,000 police officers and gendarmes have been killed and some 11,000 injured in the line of duty. It is to be noted that the number of casualties has decreased dramatically in recent years. While 194 police and gendarmes were reported killed in 1999, the corresponding figure for the year 2000 was 27. The same figures for suspected PKK militants were 1,202 and 365, respectively. The number of killed unarmed civilians was 64 in 1999 and 43 in 2000. Violence is on the decrease and the number of incidents of extrajudicial killings has fallen sharply, but the phenomenon has by no means disappeared. Many expressed fears of a flare-up because of the undercurrent of tension between the people and an administration accused of consistently violating their rights. At the time of the Special Rapporteur's visit to Diyarbakir, tensions were high. The Chief of Police of Diyarbakir, Gaffar Okkan, his driver and four police officers had been killed in an armed attacked on his car near police headquarters shortly before the visit. The attackers, it was reported, had used hand grenades and automatic rifles. The murdered Chief of Police had in the months preceding his death gained the confidence of the people and was respected by the local population. The gruesome murder brought back memories of reprisals and violence. Some time after the attack a member of HADEP, Sardar Tanis, and a relative, Eyup Tanis, disappeared shortly after they visited the office of the Gendarme Station Commander of Silopi (see paragraph 44 below).

37. The findings presented are largely based on information brought to the Special Rapporteur's attention during the visit. In drafting her report, the Special Rapporteur also studied a number of judicial decisions on the national level, as well as cases of the European Court of Human Rights. Some of the material discussed in this report was also gathered by the Special Rapporteur in the course of direct interviews with witnesses or persons who reported having personally experienced human rights abuses. While the majority of the cases brought to the Special Rapporteur's attention relate to the situation in the south-east of Turkey, a number of incidents were also reported from locations elsewhere in the country, such as Istanbul, Ankara and Adana.

A. Death threats

38. The Special Rapporteur wishes to take this opportunity to expresses her deep concern that. Eren Keskin, a well-known lawyer and human rights activist, whom she met with during her mission, reportedly later received death threats in relation to her human rights work. Ms. Keskin is a prominent member of the Human Rights Association (IHD) and the founder of the Legal Aid Project, a programme giving support and assistance to women who have been raped or sexually abused in custody. It was reported that Ms. Keskin had received threatening telephone calls on her mobile phone, at her law office and at the offices of IHD, including threats that she would be raped and killed. Furthermore, on 9 April 2001, Ms. Keskin reportedly learned that a man arrested in Konya had confessed that he had intended to kill her.

39. On 18 April 2001, the Special Rapporteur on violence against women, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint urgent appeal calling on the Government to take all necessary measures to ensure Ms. Keskin's safety and physical integrity.

In two letters in reply to the appeal, dated 5 and 13 June 2001 respectively, the Government stated that Ms. Keskin had not requested the security forces to provide her with extra security. According to the Government, she had, however, asked for increased police patrols around the Istanbul Branch of IHD. Upon receipt of this request, the necessary measures had been taken by the authorities. The Government also confirmed that one person, currently under arrest and held in detention, had confessed that he had been planning to murder Ms. Keskin.

40. On 21 September 2001, the Special Rapporteur sent an urgent appeal to the Government of Turkey regarding alleged threats against Mehmet Dilsiz, head of the People's Democratic Party (HADEP) in Cizre, and Sait Buldus, the landlord of the building housing the HADEP office in the town. According to information received, on 20 September 2001, a grenade exploded at the Cizre office of HADEP. It was further reported that Mehmet Dilsiz had been repeatedly harassed and threatened by security forces. Sait Buldus was reportedly taken to the gendarmerie in Cizre and threatened in order to make him cancel the lease of the HADEP party. It was also alleged that on another occasion Sait Buldus had been taken by plainclothes gendarmes to the border with the Syrian Arab Republic and tortured. As Mr. Buldus refused to cancel the lease, gendarmes had reportedly confiscated the keys to the building and changed the locks.

41. The Special Rapporteur heard over a dozen testimonies and from a large number of other persons that members of the Hizbullah abducted and killed people with impunity. One man said that he had paid ransom to the Hizbullah for the release of his son as the police did not take any action on his complaint that his son had been kidnapped. The Special Rapporteur met women whose family members were allegedly killed by members of the Hizbullah and women who negotiated themselves with Hizbullah agents for the release of their relatives as the police gave them no help. It was reported that ordinary citizens had discovered 14 small cells under the mosque in the village of Yolagzi in Silvan district where abducted people were kept and sometimes killed. These people, whom the Special Rapporteur met, complained bitterly that the authorities, despite being given the information, did not move against identified Hizbullah members suspected of killing people.

B. Deaths in custody

42. During her mission, the Special Rapporteur heard updated reports on the case of Suleyman Yeter, a journalist and trade unionist who reportedly died on 7 March 1999 while in police custody. On 5 March 1999, Mr. Yeter and four other persons were reportedly taken from their offices at the newspaper Dayanisma in Istanbul and taken to the anti-terrorist branch of the Istanbul police headquarters, where Mr. Yeter subsequently died allegedly as a result of torture during interrogation. The Special Rapporteur raised the case of Mr. Yeter in a letter to the Government on 2 November 1999. In its reply of 9 December 1999, the Government confirmed that Mr. Yeter had indeed died in custody as a result of torture and that 16 police officers had been prosecuted for the incident. On 23 January 2001, the Special Rapporteur wrote to the Government requesting updated information regarding the legal proceedings against the officers. At the time of the Special Rapporteur's visit, the legal proceedings against the accused policemen were still pending.

C. Abductions attributed to security forces

43. While on mission, the Special Rapporteur listened to numerous testimonies by persons alleging that their relatives or family members had been killed after having been abducted by security officers. Most of these cases were reported to have occurred in the period 1990-1995. Many of the people the Special Rapporteur spoke to stated that the authorities had failed to take action to investigate and prosecute the cases. A large number of the unresolved cases were before the European Court of Human Rights.

44. While the number of cases of abductions or "disappearances" have decreased over the last few years, at the time of the Special Rapporteur's visit such incidents still did occur, particularly in the remote areas of south-east Turkey, and there was deep concern at the recent disappearance of two persons. On 25 January 2001, at 1.30 p.m., Serdar Tanis, head of HADEP in Silopi, and his cousin were reportedly approached by three men in plain clothes who introduced themselves as police and asked them to get into a car. Serdar Tanis refused, saying that he would first talk to the District Gendarme Commander and only then go to the police station. At 2.30 p.m., Mr. Tanis reportedly received a call from a person who claimed to be calling from the gendarme station, asking him to report to the station. Mr. Tanis called up his friend Ebubekir Deniz and told him that he had been summoned by the Gendarme Station Commander. Both men were dropped at the gendarmerie station by a close associate, Omer Sansur, whom they instructed to wait for them to take them back. After some time had passed and they had not returned, Mr. Sansur reportedly panicked and went to report the situation to the State Chief Prosecutor. The two men have yet to be heard from and have been termed "disappeared" by their party, HADEP.

45. During the visit the Special Rapporteur interviewed several people, including family members and Serdar Tanis' lawyer. She was shown documents relating to the incident which linked Serdar Tanis' disappearance to the security forces.

46. Serdar Tanis became President of the HADEP Silopi Chapter in September 2000, and in one of his letters to the President of Turkey in early January 2001, he wrote that since taking up his position he had been continuously harassed by the security agencies, which were pressing him to relinquish his post and leave the party. He also wrote that on 2 January 2001 his father was stopped and taken to the Diyarbakir Provincial Gendarme Regiment Commander for questioning about his son's whereabouts.

47. On 5 January 2001, Serdar Tanis' father was again stopped by gendarmes and taken to the Silopi District Gendarme Commander who connected him by telephone to the Sirnak Provincial Gendarme Regiment Commander, who told the elder Mr. Serdar's father that "Serdar must see me today. If he doesn't come, he shouldn't try setting foot in Sirnak again, and if he does, I will kill him! Wherever you go, everyone knows my rank and my post."

48. An immediate alarm was raised by relatives, lawyers and HADEP regarding the disappearance of the two men. The authorities, members of Parliament and the press were informed, and the affair became public knowledge. Initially, the officials at the gendarme station denied any knowledge of the disappeared persons but later admitted that they had indeed visited the gendarmerie station in Silopi and that their names appeared in the logbook at the entrance.

According to the official information the men had asked to see the Commander. As the Commander was not present, the men left after 30 minutes. The Special Rapporteur was informed by government representatives that investigations had been initiated into the case. Regrettably, the Special Rapporteur did not get a sense that the civil authorities had sufficient power to investigate the District Gerdarme Commander. The two men were still missing at the time of writing of the report.

49. On 19 February 2001, during the Special Rapporteur's mission, another member of HADEP, Selahattin Oge, was abducted from his home, allegedly by four men believed to be officers of the intelligence and anti-terror unit of the gendarmerie (JITEM). The following day Mr. Oge was found seriously injured and unconscious. While being treated at hospital, Mr. Oge reportedly stated that he had been blindfolded, severely beaten and then rushed into a car by his abductors, who later dumped him onto the road where he was found.

50. The Special Rapporteur has also received reports concerning Nevaf Bakir, a 15-year-old high school student who was abducted allegedly by members of JITEM in Mardin on 27 February 2001. His dead body was reportedly found on 10 March 2001, close to the special forces headquarters in Mardin. On 17 September 2001, the Special Rapporteur sent a letter requesting the Government to inform her of the steps taken to investigate the case with a view to bringing the perpetrators to justice.

D. Deaths due to excessive use of force and extrajudicial killings attributed to security forces

51. In recent years there have been a number of incidents where prisoners have been killed by security forces in connection with unrest and tensions in prisons in locations throughout Turkey. On 26 September 1998, 10 prisoners, all members of left-wing organizations, were reportedly killed by prison guards in Uluncalar prison in Ankara. It was alleged that their bodies displayed injuries suggesting that they had been tortured and extrajudicially executed. On 18 January 2001, the Special Rapporteur sent a letter to the Government requesting information on the investigations into this case. By letter of 4 July 2001, the Government replied, stating that on 2 September 1999 a group of prisoners belonging to the organizations TIKKO and DHKP/C had taken over control of dormitories 4, 5 and 7 in Uluncalar prison. According to this information, the prisoners had blocked the entry of prison staff in an attempt to prevent searches for weapons and other illegal material in those wards. As the prisoners refused to negotiate with the prison authorities, security forces were sent in on 26 September 1999. The security officers used tear-gas to disperse the inmates. However, in response the prisoners reportedly opened fire on the security personnel, who had no choice but to respond in kind in self-defence. Ten prisoners were killed and 18 wounded in the clashes. Six security personnel were seriously injured by gunfire. The Government stated that weapons and explosives were recovered in the operation, including one automatic rifle and seven pistols.

52. On 19 December 2000, an operation to transfer prisoners in 20 prisons launched by security forces throughout Turkey resulted in the death of 30 inmates and two gendarmes. Prior to the operation, more than 1,000 inmates had been on hunger-strike for 61 days in a large number of prisons across Turkey to protest the planned transfer of prisoners to new so-called F-type prisons. The inmates maintained that the new institutions would lead to increased

isolation of prisoners and expose them to abuse and torture. The authorities say that the reform was necessary as the situation was getting increasingly lawless, with weapons and drugs circulating inside the prisons.

53. During her mission, the Special Rapporteur visited the Uluncalar prison in Ankara, the central prison in Diyarbakir and the women's prison in Istanbul. In these institutions she had the opportunity to speak to a number of inmates who said they had personally witnessed some the operations referred to above. Others had decided to begin a hunger strike in protest against changes in prison rules and the introduction of so-called F-type prisons.

54. Testimonies indicate that during the prison operations in December 2000 the security forces used excessive force, including indiscriminate gunfire, gas, stun and incendiary grenades as well as other explosives, in order gain access to the prison wards and when rounding up prisoners for transfer. It is reported that the prisoners were beaten and in some instances tortured, both during and after the transfer operation. It appears that most of the inmates killed were shot dead by security forces, or burned to death either by incendiary grenades or self-immolation. One female prisoner showed the Special Rapporteur serious burns, which she said she had suffered during the operation. Eyewitness testimonies also support earlier allegations from other sources that inmates were subjected to ill-treatment and torture by security forces during and after the operation.

55. These accounts contrast sharply with information provided by the Government to the Special Rapporteur prior to her visit to Turkey. According to these documents, sent by letter of 22 December 2000, on 18 December 2000, 1,269 prisoners were on hunger strike and 287 on "death fast" in prisons nationwide, in a campaign to protest against prison reforms introduced by the Government. The main aim of this reform was to move inmates from large dormitory-like wards to smaller units in order to improve living conditions and eliminate violence and illegal organizations in the prisons. When the hunger strike was on its sixtieth day, on 20 December 2000, the authorities decided to intervene so as to prevent the most affected prisoners from dying. According to the Government, in some prisons the security forces met with armed resistance, including with automatic rifles and Molotov cocktails. This information was repeated to the Special Rapporteur in meetings with government officials in Ankara.

56. During her mission, the Special Rapporteur also heard testimonies and received written information of deaths attributed to excessive use of force by the security forces in connection with arrests and raids against lawyers, journalists, students, political activists and other representatives of civil society. While in Turkey, on 27 February 2001 the Special Rapporteur sent a letter to the Chief of Police of Istanbul, requesting updated information regarding the status of investigations and prosecution of cases of alleged extrajudicial killings attributed to police officers. She takes particular note of the case of Irfan Adas, a 17-year-old high school student who was allegedly shot in the back and killed by police officers while distributing a political newsletter, "Salvation", in Istanbul on 13 May 1996. Witnesses say that Irfan Adas was unarmed. According to information provided by the Istanbul Directorate of Security in response to the letter by the Special Rapporteur of 27 February 2001, Mr. Adas was killed during an armed clash with security forces. The lawsuit brought against three police officials resulted in acquittals on 2 April 2001.

57. It may be noted that one named senior police official was consistently accused by witnesses and families of victims of being personally responsible for, or involved in, several cases of alleged extrajudicial executions in connection with police operations in Istanbul. The police official was rapidly promoted. In discussions with the Special Rapporteur, the Chief of the Istanbul Directorate of Security firmly stated that the official in question was a very accomplished police officer and had never been investigated for involvement in any alleged extrajudicial killing. The Special Rapporteur notes that the reply from the Istanbul Directorate of Security dated 27 February 2001 also includes information regarding seven individual cases of extrajudicial killings by the police which she had raised in meetings with the Istanbul police. According to this information, three of the cases are still pending before criminal courts, while the remaining cases had resulted in the acquittal of 32 accused officers.

58. During her mission, the Special Rapporteur also heard accounts of the so-called "Güçlükonak massacre", in which 11 Kurdish men were killed on 15 January 1996 near the village of Güçlükonak in the province of Sirnak. According to government information, these men - some of whom were village guards - were travelling in minibus when they were ambushed with rocket-propelled grenades and killed by a group of PKK fighters. In February 1996, the Turkish "Together for Peace" movement established a fact-finding mission to investigate the case. In the course of these investigations, information surfaced questioning the official investigation into the case. It is reported that immediately prior to the incident several of the victims had in fact been detained, interrogated and tortured by gendarmes in Güçlükonak, under suspicion of arms smuggling and aiding PKK. Reportedly, six of the men on the minibus were being taken from custody in Koçyurdu to Taskonak. It was alleged that these men, together with four village guards and the driver, were executed by soldiers, who then set the minibus on fire. According to reports, when the burned minibus was discovered, the charred bodies of the four village guards were found still sitting in their seats with their rifles between their legs, thus indicating that they had not made any attempt to defend themselves or flee the burning vehicle. Relatives of some of the deceased also reportedly received their identity cards from the police after the incident. It is noteworthy that the documents showed no signs of exposure to fire, although their owners had been severely burned. After having published its findings suggesting involvement of the security forces in the incident, the fact-finding mission called publicly for further investigation and prosecution of those responsible for the killings. As a result, three of the members of the mission were charged under article 159 of the Turkish Penal Code with "insulting the security forces", and sentenced to 10 months of imprisonment in February 1998.

59. Among the Special Rapporteur's interlocutors there was a general impression that those involved in crimes were protected by the police and influential persons. In this connection, almost everyone brought up the so-called "Susurluk-accident" case. This incident was also brought up before the European Court of Human Rights in the *Kaya* case, where a medical practitioner disappeared with a friend who was President of the Elazing Human Rights Association. Six days later the bodies of the two men were found with marks of injuries. Both men had been shot through the head. The families believed that the security forces were involved in the murders. The allegations were vehemently denied by the authorities, who did not accept any nexus between the criminals, the police and influential individuals. But the Susurluk incident indicates otherwise. The Special Rapporteur wishes to recount the information received

and reported to her in Turkey regarding this incident simply to make the point that there is a genuine concern amongst the people regarding links between individual government officials and criminal gangs which protect those who can kill with impunity.

60. On 3 November 1996, a speeding black Mercedes coming from Kusadasi collided with a cargo truck in the town of Susurluk. Of the four people in the car, three died on the spot. The four people were: a True Path Party (DYP) member of Parliament from Urfa Province, Sedat Bucak, a former deputy Police Chief of Istanbul and head of a regional police academy, Huseyin Kocadag, an underworld "mafia don", Abdullah Catli, wanted by the Government in many cases of murder, drug-trafficking, gun running and anti-State activities, and a belly dancer. The "mafia don", the belly dancer and the police officer lost their lives, while the critically injured member of Parliament was whisked away by his bodyguards before local residents could gather around the crashed car.

61. The Member of Parliament, Sedat Bucak, is a wealthy and influential landowner from south-east Turkey who, according to reports, controls over 100,000men, 30,000 of them are allegedly armed. Owing to his position in the region, he is said always to win elections in his constituency. He was admitted to a hospital in Istanbul after the accident.

62. Abdullah Catli was wanted for murder of seven people, and for drug-trafficking. He had served long prison sentences, and was wanted in Europe for his drug related activities. According to certain reports, he had worked for the Turkish Government in the early 1980s in clandestine operations after which he became a fugitive. He is known to have later developed cordial family relations with the Interior Minister Mehmet Agar.

63. Mehmet Agar also came under fire in the press for his alleged close association with Abdullah Catli, the "mafia don", and he later resigned from his post as Minister of the Interior. Agar was a close confidante of the then Prime Minister Tansu Ciller, and the matter was investigated at the highest levels.

E. Right to life of women

64. The Special Rapporteur received reports of "honour" killings of women, mostly occurring in the east and south-east of the country. During her mission, the Special Rapporteur met a young man in prison who had killed his mother and was extremely remorseful about it. Women's rights organizations reported that impunity in such cases is taken for granted, as women's right to life remains subject to so-called social values. The Special Rapporteur noted with concern that apart from a few women's rights organizations, all other non-governmental organizations dealing with human rights were of the opinion that "honour" killings were not a concern for human rights advocates. They did not consider it a human rights concern but a social issue. Reports from women's rights groups confirm that only a few cases come to light, as the local authorities and society in general condone the crime. A large number of cases go unreported and the few that are reported hardly ever reach the trial stage. The exceptional cases brought to trial and ending in convictions receive a token punishment.

65. Under Turkish law, killing an immediate relative is punishable by death. But if the killing is committed as a result of "heavy provocation", the sentence is significantly reduced. Women lawyers quoted several judgements in which judges reduced sentences by seven eighths if doubt had been expressed by the defence as to the morality of the female victim. Many cases of women being threatened with "honour killing" were also reported to the Special Rapporteur. As a preventive measure, the Government runs shelter homes but does not, as a policy, arrest family members threatening the lives of victimized woman. Existing shelters are insufficient and ineffective in guaranteeing the right to life of threatened women. There are eight State-run and two non-governmental shelters for women, most of them in urban centres.

66. In this connection, the Special Rapporteur wishes to make reference to her earlier reports to the Commission on Human Rights in which she has discussed the issue of so-called "honour killings" at length and in greater detail. In her report to the fifty-sixth session of the Commission (E/CN.4/2000/3), the Special Rapporteur welcomed initiatives by the Government of Turkey to amend its legislation in order to bring it into conformity with international standards pertaining to "honour killings". She strongly encourages the Government to pursue its declared policy in this regard.

F. Concerns about the right to life of children

67. The Special Rapporteur received reports of children being killed by security forces. On 19 February 1999, Necmettin Kahraman (17 years old) was allegedly fatally shot in Kiziltope, in Mardin Province. The incident reportedly occurred when security forces fired on a non-violent demonstration calling for independent monitoring of Abdullah Oçalan's trial. The Special Rapporteur was told that no investigation was carried out.

68. On 16 August 1999, Paban Cadyroolu, 14 years old, was reportedly beaten to death by a police officer in Van. The father of the victim and other witnesses were allegedly coerced into withdraw their complaint and testimonies in this matter. The case is being investigated and the Special Rapporteur awaits the results.

69. Convictions are few and far apart. The sentences in some cases are an insult to the norms of justice. A particular case which came to the attention of the Special Rapporteur disturbed her, as the punishment pronounced indicates the value attached to the life of ordinary citizens by the trial court. On 9 January 1996, Cetin Karakoyum, 14 years of age, died of a gunshot wound in the head during incommunicado detention at Magazalar police station in Mersin. A few months later, a police officer was convicted of "negligence and carelessness" and was fined around US$ 30.

V. VIOLATIONS OF THE RIGHT TO LIFE: TURKEY AND THE EUROPEAN COURT OF HUMAN RIGHTS

70. In recent years, a number of cases have been filed with the European Court of Human Rights at Strasbourg, France, regarding violations of the right to life under article 2 of the European Convention on Human Rights.[1] Decisions by the Court confirm that there are serious limitations on access to justice in Turkey: In numerous cases domestic remedies were found to be ineffective and resulted in miscarriage of justice. The decisions of the European Court have

prompted some reforms in the Turkish justice system. However, they remain cosmetic as the fundamental flaws of the system have not been addressed. Following judgements of the European Court, the public prosecutor was given the authority to appeal against the decision of higher official authorities denying permission to prosecute members of the security forces. This does not, however, either empower or strengthen the office of the public prosecutor in carrying out effective, independent and impartial investigations. Moreover, as part of the reforms, the military member of the State Security Court has been removed, but this alone does not inspire the confidence of the people. The gaps in the legal structure remain, and provide escapes for those who master the art of taking full advantage of a weak and incapacitated system. Such escape routes are informally recognized, which gradually leads to institutionalized impunity.

71. During her visit to Turkey the Special Rapporteur met with families of victims whose cases were pending or had been decided by the European Court, and was in this way able to get a detailed picture of how they had struggled to reach the forums of justice. The European Court has found in more than one case that investigations against members of the security forces were inadequate. In some instance, it appears that proper investigation was deliberately avoided or blocked. The impression that the Special Rapporteur formed, and which was reinforced by reading the decisions of the European Court, is that impunity of the security forces is extended by design. Loopholes in the justice system have been pointed out by various observers and groups in the country, as well as by international fact-finding missions. The judgements of the European Court indicate the need for drastic reforms in the legal system. In response, the Government has continued to make adjustments which have become unavoidable because of the European Court's judgements, or other pressures, but have so far not moved to fill the gaps which allow impunity for the security forces.

72. There are also serious concerns about the capacity, reliability and independence of forensic expertise in Turkey. The Special Rapporteur was briefed by the Istanbul Medical Association about threats to forensic experts and the pressure under which these experts work. In some instances medical practitioners finally succumbed to pressures from the law enforcement authorities.

73. To illustrate the situation, the Special Rapporteur wishes to present in summary-form a brief overview of a number of decisions of the European Court which she has had the opportunity to study after her visit to Turkey. The cases summarized below, coupled with the more recent cases discussed elsewhere in the present report, strongly suggest that despite various reforms and commitments on the part of the Government, the underlying causes of impunity in Turkish society have not been removed.

74. Mahmut Tanli, aged 22, was taken into custody by the gendarmes in Ortulu on 27 June 1994. A day later, his family was informed that Mahmut had died of a heart attack while in custody. The autopsy reportedly ruled out force or violence. The public prosecutor after investigation, indicted three police officers, and the court sought further forensic evidence. The body was exhumed but the Istanbul Forensic Medicine Institute stated that it had decomposed to the extent that no finding as to the nature of death was possible. The Institute criticized the initial autopsy report as being of little scientific value. The three police officer were acquitted by the court.

75. The European Court also observed that the autopsy was of critical importance in determining the facts surrounding Mahmut Tanli's death. Although launched promptly by the public prosecutor, the post mortem was shown to be defective in a number of fundamental respects. In particular, the organs were not removed or weighed; the heart was not dissected; the neck area had not been dissected; no tissue samples were taken nor histopathological analyses conducted which might reveal signs of electrical shock or other forms of torture and ill-treatment; no toxicological analyses were undertaken; no photographs were taken; and the emboli found were not adequately described or analysed. It also appeared that the doctors who signed the post mortem report were not qualified forensic pathologists, notwithstanding the provision in the Code of Criminal Procedure which requires the presence of a forensic doctor.[2]

76. Nebahat Akkoc made an application to the European Court regarding the killing of her husband by unknown persons. She complained that she was arrested at her home by police officers and detained for 10 days. She was reportedly tortured and questioned about her application to the European Commission on Human Rights. The Court ruled that torture and intimidation hindered the petitioner's effective exercise of the right of individual petition.

77. The Court took note that where offences were committed by State officials in certain circumstances, the public prosecutor's competence to investigate was removed to administrative councils which took the decision whether to prosecute. The Court had already found in two previous cases that these councils, made up of civil servants under the orders of the governor, did not provide an independent or effective procedure for investigating deaths implicating the security forces. The Special Rapporteur notes that although this embargo against the public prosecutor has been lifted, there are still limitations on the authority of the public prosecutor to investigate serious human rights violations committed by security forces.[3]

78. In *Cicek v. Turkey* the Court observed that the first inquiries were made by the Lice gendarmes one and a half years after the applicant's sons had been detained. The public prosecutor of Lice heard testimonies from the co-detainees of the victims three and a half years after the incident. On the other hand, it was not in dispute that the applicant had apprised the Lice gendarmerie authorities and the public prosecutor's office at the Diyarbakir State Security Court that her sons had not been released with other villagers arrested at the same time. Moreover, there is no evidence to suggest that the public prosecutors themselves had made an attempt to verify the information contained in the custody ledgers or the places of detention, nor were the Lice gendarmes or other soldiers asked with any insistence to account for their actions on 10 May 1994. The Court, therefore, found that the investigation carried out into the disappearance of the applicant's sons was inadequate and in breach of Turkey's procedural obligations to protect the right to life.[4]

79. Asiye Demiray complained that her husband had been killed by State security forces while in custody. The Government alleged that Mr. Demiray was arrested on suspicion of being a member of PKK - an accusation supported by the fact that he was able to identify the site of a PKK ammunition dump. According to government information, he was killed while showing the dump to the security forces when a booby-trap device planted by PKK exploded. The family claimed that three weeks after his arrest they were informed by the authorities that

Mr. Demiray's body had been found. An autopsy was not performed, and his body was reportedly buried without his relatives being present. The Court noted that the sketch furnished by the authorities showed the victim 1 metre away from the ammunition dump while the three gendarmes accompanying him had taken up positions 30-50 metres away.

80. An investigation was carried out in name only. The Court noted firstly that it did not appear that the Lice Public Prosecutor's Office had visited the site of the explosion, or that any of the gendarmes present at the scene had been questioned. In addition, the authorities' conclusion that an autopsy was unnecessary was, in the Court's opinion, unreasonable in view of the circumstances of the death.[5]

81. Muhsin Tas was apprehended during an operation carried out by the security forces. The family of Mr. Tas was told that he had absconded from custody. An investigation ordered by the public prosecutor ended without any indictment, as it had proved impossible to establish the identity of the officers who had signed the gendarmerie report which alleged that Mr. Tas had escaped.

82. The Court accepted the findings of by the European Commission on Human Rights after its hearing of evidence in this case. It also found that the late submission of information concerning the domestic investigation, which had been requested repeatedly by the Commission, deprived the Commission of the opportunity of summoning witnesses with potentially significant evidence.[6]

83. Ahmet Çakici reportedly disappeared after having been taken into custody by the gendarmes. The applicant, his brother, argued that Ahmet, along with three other Kurds, were taken into custody by the Turkish authorities during an operation in the village of Cittibance carried out by gendarmes and village guards in November 1993. He had not been seen since. The Turkish authorities claimed that Ahmet Çakici was never taken into custody or detained on remand. However, several villagers witnessed his arrest, and one of the three other detainees reported that he was held for 16 to 17 days in the same detention centre as Mr. Çakici. Ahmet Çakici had at the time claimed that he had been tortured many times.

84. In its judgement of 8 July 1999, the European Court held that there had been a violation of article 2 of the European Convention on the ground that Ahmet Çakici's disappearance after being taken into custody had given rise to a presumption that he had died. In the absence of any explanation by the Government as to what had happened to him during his detention, the Government was found in violation of article 2 on the ground that there had been an inadequate investigation into the disappearance of Ahmet Çakici. The court referred in particular to the lack of accurate and reliable records of persons taken into custody by gendarmes and the lack of any prompt or meaningful inquiry into the circumstances of Ahmet Çakici's disappearance.[7]

85. Agit Salman reportedly died in custody. The autopsy disclosed marks and bruises and a broken sternum. The cause of death was not established and the report was referred to the Istanbul Forensic Institute, which concluded that the prisoner had died of cardiac arrest. Mr. Salman's wife appealed against the public prosecutor's decision not to prosecute police officers. She also produced photographs taken of the body showing signs of torture and beating

on the soles of the feet ("falaka"). The police were acquitted for lack of evidence. The European Court found that no plausible explanation had been provided by the Government regarding the injuries, and concluded that the evidence did not support the Government's contention that Agit Salman had died from a heart attack.[8]

86. Musa Ogur, a night watchman employed in a mine, was allegedly killed by security forces. No investigation was ordered as the Administrative Council issued a decision that the victim was shot during an attack against the security forces at the scene of the incident. It was claimed that warning shots had been fired before using force against the armed opponents. The Court concluded that there was insufficient evidence to establish that the security forces had come under armed attack at the scene of the incident. The Court further found that the force used against Mr. Ogur was neither proportionate as self-defence nor absolutely necessary in order to arrest the victim.[9]

87. The family of Timurtas (who disappeared) claimed that he had been killed by the security forces while in custody. The Government denied it. The family supported their allegation by producing a photocopy of a document said to be a post-operation report by the security forces in which the arrest of Timurtas was recorded. The Government did not accept the document as genuine but did not produce records of its own which could establish its authenticity or. They contended that the Government's custody records could not be inspected because of their secret nature. The Court did not find the Government's position satisfactory and agreed that by refusing to grant access to documents which were in its hands, the Government allowed the inference to be drawn that the photocopy produced by the petitioner was genuine.

88. On 13 June 1995, Kadri Ates, the applicant's son, together with a colleague (Burhan Afsin), relatives (Vehbi Demir and Kemal Ates) and another man (Memduh Cetin), set off from Diyarbakir for Kulp District in a lorry. At about 8.00 a.m., the vehicle was reportedly stopped by policemen. After being told to return to Diyarbakir, Kadri Ates and Vehbi Demir were ordered to accompany two armed police officers to their car. They were reportedly blindfolded and questioned about the presence of "Mekap shoes", a brand of sports shoe used by PKK, in their lorry. The officers then proceeded to punch Kadri Ates. The two men were allegedly taken to the Riot Police Directorate and locked in a cell where Vehbi Demir was handcuffed to the door while still blindfolded. He then heard officers telling Kadri Ates to strip. Thereafter, Vehbi Demir heard Kadri Ates' screams and cries which continued for two to four hours. On the fifteenth day of custody, Vehbi Demir was reportedly taken for interrogation and subjected to beatings during which he continued to deny all accusations. His interrogators told him that they had killed Kadri Ates. On 20 June 1995, seven days after Kadri Ates was detained, his father was informed by both the Diyarbakir State Security Court and the Diyarbakir Security Directorate that his son was not in custody. He was referred to the Lice State Prosecutor who reportedly informed him that his son had died in a clash between security forces and PKK. The Lice Public Prosecutor commenced an ex officio investigation in order to clarify the circumstances of the death of Kadri Ates. The investigation was still pending at the time of the Court's decision, over four years later. The European Court declared the application admissible.[10]

89. Abdulkadir Celikbilek was allegedly abducted by two policemen outside a downtown café in Diyarbakir. The incident was witnessed by bystanders and Mr. Celibkilek's brother. A few days later the victim's body was reportedly found lying on heap of rubbish bearing signs of torture. The Government denied responsibility and asserted that meticulous criminal investigations were being carried out. The case was admitted by the European Court.[11]

90. On or about 6 October 1994, Aydin Kismir, Irfan Kismir and Turan Kismir, the applicant's sons, together with two other relatives by the name of Baris Kalkan and Yilmaz Kalkan, were reportedly detained by police officers and taken to the Diyarbakir Police Academy. After Aydin Kismir had been taken away for interrogation the other detainees heard him scream repeatedly. The police officers were heard to threaten Aydin, telling him that death would not be easy. Aydin was later seen being taken away by the policemen, who were holding him by his arms and dragging him along the ground. On 8 October 1994, Yilmaz and Irfan were released. Yilmaz told the applicant that Aydin was in custody and was being very badly tortured. That same day the applicant applied to the State Security Court Public Prosecutor for information about her son. On 10 October 1994, the prosecutor acknowledged that her son was in police custody. On 11 October 1994, the police went to the applicant's house and told neighbours that she should go to the hospital and pick up Aydin's body. At the hospital, the police first denied that they had Aydin's body. Two hours later they acknowledged that Aydin's body was at the morgue, but the applicant's request to see her son was refused. The prosecutor told a relative of the applicant at the hospital that Aydin had thrown himself from a seventh floor window. According to government information, the victim had died of injuries sustained while escaping from custody. The public prosecutor decided not to prosecute the accused officials as he concluded that the cause of death was a result of torture. The European Court admitted the case.[12]

91. Havva Ergi was allegedly killed by Turkish security forces during an attack on the village of Kesentas, in south-east Turkey on 29 September 1993. Her brother filed an application regarding the extrajudicial killings of his sister and the lack of effective remedy in respect of her death.

92. In its judgement of 28 July 1998, the European Court found violations of articles 2, 13 and 25 of the European Convention. In particular, it criticized the way in which the attack was carried out by the security forces. The defects in the planning and conduct of the operation, and the subsequent lack of an adequate and effective investigation into the killing, demonstrated a breach of Havva Ergi's right to life. Her brother and daughter were awarded compensation by the Court. This case is another example of the continuous failure of the domestic organs in Turkey to guarantee effective redress for victims of human rights violations.

93. A striking feature of the case is the Court's criticism of the authorities' intimidation of Mr. Ergi (the applicant) once he had submitted his application under the Convention. He had alleged that following the filing of his application he was interviewed by the Anti-Terror Department of the police on several occasions and had been intimidated and threatened. The Court found that the Turkish authorities had intimidated Mr. Ergi in a manner which unduly interfered with his application.

VI. IMPUNITY AND LEGAL REFORM

94. The Special Rapporteur notes that the cases of extrajudicial executions attributed to the police and security forces discussed in the preceding sections, including the ones referred to the European Court of Human Rights, strongly suggest that the State has in many instances not exercised due diligence in investigating and prosecuting human rights cases. In this situation, State agents have been able to continue to commit grave human rights violations, including extrajudicial executions, with the knowledge that their crimes would not result in investigation or criminal prosecution. This systematic impunity has led to an atmosphere of fear among the population and undermined the citizen's trust in the law enforcement agencies and the justice system. The number of grave human rights violations, including extrajudicial executions, attributed to State agents has decreased in the last few years and the authorities appear to have taken some steps to investigate new cases. However, large numbers of past cases remain unresolved. It is essential that these abuses be investigated and the perpetrators brought to justice without further delay.

95. In order to address human rights concerns and curb impunity within the administration of justice, the Government has introduced enhanced training programmes for both members of the judiciary and officials of the law enforcement agencies, in particular the gendarmerie. In another move aimed at limiting impunity for public officials, the Law on the Accountability of Civil Servants and other Public Employees was adopted on 2 December 1999 by the Grand National Assembly. The law, which entered into force on 5 December 1999, replaced an old law which gave a local administrative board, established under the provincial governor, the power to decide whether or not to prosecute members of the security forces for any offence other than intentional killing. There was no time limit on the taking of such a decision.

96. The present law is an improvement, but does not address the institutional impunity extended to security forces or public employees in cases of crimes committed in connection with their duties. The new law does place a time limit for taking the decision on whether to prosecute a civil servant and gives greater authority to prosecutors in that regard. Under the new procedure, the complaint is forwarded to the office of the prosecutor, who in turn notifies the government office to which the accused civil servant is attached. A senior officer decides within 30 days if the accused civil servant is to be investigated. For extraordinary cases, the time limit can be extended to 45 days. Once permission is granted by the higher officials, the prosecutor may decide to take no further action or to proceed with the matter. Where permission is denied the prosecutor may appeal to the Council of State or the relevant regional administrative court. The law lays down a time limit of three months for the decision to be reached on the appeal. The decision by the Council or the court is final.

97. Article 15 of the law makes it incumbent upon the authorized or responsible chief public prosecutor to initiate investigations of those who make "unjust claims." All complaints under the law must be precise, as the law says that "information and complaints about civil servants and other public employees must not be abstract and general in nature, and individuals and /or incidents must be mentioned in information or complaints." The law does not include cases requiring "heavy punishment" The Special Rapporteur was told that there was some confusion about whether extrajudicial killings would fall under this law or be prosecuted according to the

general provisions of criminal law, and in fact judges, lawyers and prosecutors with whom the Special Rapporteur met could not clarify the situation . "Intentional killing" would not fall under law, but it was also unclear whether killing committed in the course of duty would amount to "intentional killing". The distinction is important, as in the case of extrajudicial execution members of the security forces could be investigated and prosecuted without having to seek permission or a court order for the public prosecutor to proceed with the matter.

98. As regards safeguards for the independence of the judiciary, it may be noted that the Turkish Constitution establishes the High Council of Judges and Public Prosecutors (High Council) which oversees the judiciary, except the Constitutional Court and military courts. The Minister of Justice is the President of the High Council and the Under-Secretary of the Ministry is an ex officio member. Other members are appointed by the President from lists proposed by the High Court of Appeals and by the Council of State. The Special Rapporteur notes that military judges are no longer appointed to the State Security Court following a judgement of the European Court of Human Rights in the case *Incal v. Turkey*. The presence of a military judge in the State Security Court was found to be contradictory to the principle of a fair trial.

99. The Special Rapporteur has been informed that in November 1996, 115 members of Parliament applied to the Constitutional Court to examine the provisions of the 1996 Provincial Authority Act. The Constitutional Court struck down a provision of the law relating to "anti-terror", which said that "during the operations against terrorist organizations, the Security Forces may use firearms directly and without hesitation [against] the assailants if the order to surrender is not obeyed and the assailant(s) intend to use firearms". The Court found that the law was in breach of the right to life principle in the Constitution.

100. The anti-terror law has also been amended to reduce the pre-trial detention period from 30 days to 10 in the provinces under the state of emergency legislation, and from 14 days to 7 elsewhere in the country. The Special Rapporteur wishes to point out that a mere reduction in the period of pre-trial detention does not protect citizens from the abuse of the authorities unless it is limited to the period of time required to bring a detainee before the court and to secure access to legal counsel while signs of any ill-treatment are still visible.

101. The Special Rapporteur was informed that several reforms are under consideration. For example, the Penal Code is being amended and reformed to improve the substantial law. The Office of the Public Prosecutor was to be strengthened, but there was a running controversy between the Law Ministry and the Interior Ministry regarding the control of the investigating agencies. The former insists that the investigation officer should be attached to and under the control of the Public Prosecutor. Lawyers and human rights organizations support this position. During the visit the Minister for Law also emphasized the importance of an independent investigating agency. This is apparently being strongly resisted by the Interior Ministry which currently supervises the investigation of crimes.

102. The Special Rapporteur acknowledges the measures taken by the Government of Turkey to enhance the integrity of the administration of justice, strengthen human rights safeguards for the individual and fight impunity for grave human rights abuses perpetrated by State officials. However, she is concerned that, in view of the scope and complexity of the challenges at hand,

these reforms and steps may prove not to be sufficient in order to ensure that the legal machinery is be able and willing to protect the right to life of all individuals and to put an end to impunity for grave human rights violations.

VII. THE DEATH PENALTY

103. Although capital punishment has not been formally abolished in Turkey, no executions have been carried out since 1984. The Special Rapporteur notes that the Government has on repeated occasions announced its firm commitment to abolish the death penalty, and as a member of the Council of Europe conform to one of the most fundamental provisions of the European human rights regime. This commitment was confirmed in discussion the Special Rapporteur held with government representatives in Ankara.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

104. At the time of the Special Rapporteur's visit, the incidence of extrajudicial killings had dramatically reduced. There was unanimous agreement on this. There was, on the other hand, grave apprehension that the situation could change for the worse as the underlying grievances, system, tensions and attitudes remain unaddressed.

105. The Special Rapporteur is convinced that preventive measures are necessary to exclude the possibility of further extrajudicial killings and some proactive steps need to be undertaken to bring the perpetrators of grave human rights violations to justice. In order to minimize the possibility of further extrajudicial killing, some realities have to be addressed and a way found to ensure that the right to life is respected and that citizens regain a sense of security.

106. There is bitterness about the past. Many innocent people were killed, and their families believe that the security forces were largely responsible. The hunger strikers in prisons have made the situation tense, which could lead to further violence unless the Government shows some flexibility and willingness to engage in dialogue. A political solution rather than force is likely to end the current deadlock. The Special Rapporteur is convinced that the legal system of Turkey needs to be reformed and the security forces, especially the gendarmerie, need to be reoriented so that they develop a solid respect for the rule of law and carry out their duties in strict compliance with the international and domestic human rights standards pertaining to law enforcement.

107. People whom the Special Rapporteur met during her visit, including government officials and politicians, emphasized the need for more transparency in decision-making on critical matters, including those pertaining to ethnic groups and other political entities.

108. Civil society in Turkey has played a pivotal role in providing legal assistance to the families of the victims. In particular, their approach in taking individual complaints to European Court of Human Rights needs to be commended. Their efforts have widened the scope for individuals to approach the European Court when domestic remedies are ineffective.

109. Over the decades, the tensions in the south-eastern part of the country have completely dominated the political scene in Turkey, thus overshadowing and marginalizing other important human rights issues, particularly that of women's right to life. The unresolved situation in the region has also continuously absorbed a disproportionate share of the country's scarce resources, to the detriment of other sectors and urgently needed social and economic programmes.

Recommendations

110. The Government should proceed as a matter of priority with ratifying the International Covenant on Civil and Political Rights and its Optional Protocol, as well as the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

111. The Government should take immediate steps to abolish capital punishment de jure, and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, as well as the Protocol No. 6 to the European Convention on Human Rights. Pending the final abolition of capital punishment, the Government should make a clear and binding commitment to establish a moratorium on all executions.

112. The Special Rapporteur recommends that the Government set up a high-level commission with strong powers to undertake fact-finding in cases where people have allegedly been killed by the security forces. This should also include cases where there is well-founded suspicion that individuals were abducted and "disappeared" by agents of the State, and cases where people were subsequently found dead after having been taken away by government forces. The commission should be given authority to suggest relief and compensation for the families of victims.

113. The situation in Turkey's prisons in critical. There has been a callous attitude towards hunger strikers and those killed during the December 2000 security operation. The potential for new clashes and consequently custodial deaths cannot be underestimated. There is an immediate need to address this issue politically, and in accordance with the norms of justice rather than through the use of force and disregard for human life. To end further deaths in prisons, the Government could consider granting amnesty to prisoners arrested for their political beliefs, especially for the young female prisoners. Such a step would generate goodwill and promote dialogue in a more harmonious political atmosphere.

114. The Government should, as a matter of priority, draw up policies to accommodate the needs of the minority population, as a way of reducing tensions and potential violence.

115. While the European Court of Human Rights provides an important avenue of redress for victims of grave human rights violations and their families, this does not and cannot replace measures urgently needed at the domestic level to restore confidence in and credibility to the country's justice system in the eyes of the people. The system of justice must be reformed to provide better access for the people and to maximize the chances of securing justice.

116. The Special Rapporteur strongly recommends that the Government establish an independent national human rights commission as a mechanism of redress for victims of human rights violations and their families. This institution should be afforded quasi-judicial powers enabling it to order compensation to be paid to families of victims of extrajudicial, summary or arbitrary executions in cases where the State is found responsible for the loss of life, even when it has not been possible to establish the identity of the individual State agents implicated.

117. Impunity for the security forces and influential individuals with connections to the establishment must end. Judicial and disciplinary mechanisms for monitoring and punishing human rights abuses by the security forces should be strengthened.

118. Public prosecutors should be given unhindered powers to prosecute members of security forces accused of extrajudicial killings. The Office of the Public Prosecutor should have its own independent corps of investigative police, accountable to the Ministry of Justice.

119. The independence of forensic experts should be guaranteed and protected.

120. Legal provisions in the Turkish Penal Code (art. 159) criminalizing false accusations against the security forces should be revoked, or at a minimum limited to cases where such accusations are proven to have been made maliciously. These legal provisions are placing unreasonable limits on the citizen's recourse to the law.

121. The Special Rapporteur has seen the resources and facilities available to the Turkish security forces. She is convinced that they have the capacity to introduce daily reporting to the public prosecutor on the cases of persons apprehended and persons released from custody.

122. Security forces are being trained in human rights norms. However, these programmes will remain insufficient until they are accompanied by a clear message from senior officials that violations of human rights committed by the security forces will not be tolerated or covered up.

123. Every case of death in custody must be investigated and those found responsible prosecuted and punished. The bodies of persons who have died in custody should not be buried without the presence of a family members, or, if this is not possible, a magistrate. Post mortem examinations should be carried out in all cases and the autopsy reports shared with the family of the deceased or a magistrate.

124. Police officers, prison officials, and gendarme or military personnel under investigation for grave human rights abuses should be immediately suspended from duty. If found guilty of the charges, they should be dismissed without delay and promptly punished.

125. The village guard system, to which a large number of extrajudicial killings have been attributed, should be disarmed and disbanded without delay. All law enforcement and security functions should be entrusted exclusively to government forces acting under strict civilian control.

126. The international community should continue to support local non-governmental organizations, particularly those working to protect the lives of women, children and ethnic minorities of Turkey. Shelter homes need to be made available to women who genuinely apprehend a danger to their lives. However, it is crucial that the basic human rights and freedoms of these women not be compromised or limited when measures are taken to protect them from violence. The decision to remain confined to a shelter home should come from the victim herself and not be imposed on her. Private shelters should be able to count on effective protection for the victims and their facilities from the Government.

127. During the mission, government representatives both at the national and provincial levels assured the Special Rapporteur that the situation in all parts of Turkey had returned to normal and was fully under the Government's control. In the light of these assurances, the Special Rapporteur strongly recommends that the Government consider lifting the state of emergency in all provinces of the country.

Notes

[1] Convention on the Protection of Human Rights and Fundamental Freedoms, article 2 - Right to life:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> "2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> "(a) in defence of any person from unlawful violence;
>
> "(b) in order to effect a lawful arrest or to prevent the escape of a persons lawfully detained;
>
> "(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Turkey has been a State party to the Convention on Protection of Human Rights and Freedoms (European Convention on Human Rights) since 1954. On 22 January 1990 it recognized the jurisdiction of the European Court of Human Rights and on 11 July 1997 ratified Protocol No. 11 to the Convention regarding establishment of a new court system.

[2] *Tanli v. Turkey*, Application No. 26129/95.

[3] *Akkoc v. Turkey*, Application Nos. 22947/93 and 22948/93.

[4] *Cicek v. Turkey*, Application No. 25704/94.

[5] *Demiray v. Turkey*, declared admissible on 21 September 1999.

[6] *Tas v. Turkey*, Application No. 24396/94.

[7] *Çakici v. Turkey*, Application No. 23657/94.

[8] *Salman v. Turkey*, Application No. 21986/93.

[9] *Ogur v. Turkey*, judgement delivered on 20 May 1999.

[10] *Ates v. Turkey*, Application No. 30949/96.

[11] *Celitibilek v. Turkey*, Application No. 27693/95.

[12] *Kismir v. Turkey*, Application No. 27306/95.

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